

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

BRIAN F. KIRVEN,)	Case No. 5:12 CV 1727
)	
Plaintiff,)	Judge Dan Aaron Polster
)	
vs.)	<u>MEMORANDUM OF OPINION</u>
)	<u>and ORDER</u>
CAROLYN W. COLVIN,)	
Comm'r of Social Security,)	
)	
Defendant.)	

On July 5, 2012, Plaintiff Brian F. Kirven filed an action for judicial review of the final decision of Defendant Commissioner of Social Security denying Plaintiff's applications for disability insurance benefits and supplemental security income. (Doc #: 1.)

On June 28, 2013, following briefing on the merits, Magistrate Judge William H. Baughman, Jr. issue a Report and Recommendation ("R&R") urging the undersigned to reverse the Commissioner's decision and remand the case for consideration of the findings of the Administrative Law Judge ("ALJ") at steps four and five of the sequential evaluation process. (Doc #: 29.) More specifically, the Magistrate Judge recommends that:

the ALJ on remand should determine if the opinions of the treating psychiatrist, Dr. Manudahane, should receive controlling weight, and explain the reasons for that determination based on the criteria set forth in the applicable regulations. If the ALJ does not give those opinions controlling weight, then he should weigh them based on the factors identified in the applicable regulations and give good reasons for the weight assigned. After reevaluating the weight assigned to the treating psychiatrist's opinions, he should reconsider the credibility finding in light of that reevaluation.

(Id. at 14.) The Magistrate Judge advised:

Any objections to this Report and Recommendation must be filed with the Clerk of Courts within fourteen (14) days of receipt of this notice. Failure to file objections within the specified time waives the right to appeal the District Court's order.

(Id.)

On July 12, 2013, the Commissioner filed a response, stating that she will not be filing an objection to the R&R. (Doc #: 30.) On July 16, 2013, the Court contacted Plaintiff's counsel to see if Plaintiff would be filing an objection, and was informed that her client would not.

Having reviewed the R&R and the record, the Court hereby **ADOPTS** the Magistrate Judge's R&R in its entirety, **REVERSES** the Commissioner's decision, and **REMANDS** the case to the Commissioner for further review consistent with the Magistrate Judge's recommendations.

IT IS SO ORDERED.

/s/ Dan A. Polster July 16, 2013
Dan Aaron Polster
United States District Judge